WP(C) 7965/2002
BEFORE
HON'BLE MR. JUSTICE RANJAN GOGOI

The challenge in the present writ petition is against an order dated 8.10.2002 passed by the disciplinary authority of the petitioner imposing the following punishment on the petitioner :

Reduction of your Pay by four stages lower in the time scale of pay. During the period of such reduction you will not earn any increment and on expiry of such period the reduction will have the effect of postponing the future increments of your pay.

By the order dated 8.10.2002, the basic pay of the petitioner in terms of the punishment imposed was fixed at Rs. 9820/- which fixation was, however, subsequently modified and the pay of the petitioner was re-fixed at Rs. 12,880/-. By the order dated 8.10.2002, it was further directed that the petitioner will not earn any pay and allowances, except what has been drawn by way of subsistence allowance, during the period of suspension as well as from 26.6.97 (the date of imposition of earlier punishment of compulsory retirement) to 6.10.2002 i.e. the date immediately preceding imposition of the punishment as noted above.

2. At the relevant point of time the petitioner was working as the Manager of the United Bank of India, Morigaon Branch. By a Charge Memo dated 1.9.94, the following charge was levelled against the petitioner :

Articles of Charges

During the tenure of service as Manager at Bank's Morigaon Branch from 01.10.88 to 27.07.93 you are failed to discharge your duty with outmost good faith, integrity and honesty in that you had illegally and unauthorizedly transferred an amount of Rs. 2,21,906.57 only in violation of the provisions of the Office Circular No. PCPPD/130/91 dated 21.03.91 to marginal deposit account to several transaction being credit balance arising out of adjustment in MTFL account of M/s. Jalugati Samabari Samity Ltd. under debt relief claim account for Rs. 28,06,031.25 on 04.03.91 as against the existing debit balance of Rs. 2478776.88 only and interest charges of Rs. 1,05,347.80 in the said account as on 30.03.91. You have passed different illegal fake entries on 30.03.91, 03.04.91, 16.07.91 and 24.08.91 prepared debit credit vouchers and signed singly the same for your gain and purposes. You had illegally debited marginal deposit account issued demand drafts to different parties and cash credit account without any consideration and thus exposed the bank to incur financial loss of Rs. 1,21,906.57. .

3. On receipt of the Charge Memo, the petitioner submitted his reply denying the charge levelled. Thereafter, an enquiry was held in respect of the charge levelled wherein the petitioner had participated. At the conclusion of the enquiry, the Enquiry Officer submitted his report dated 26.4.96 holding the charge levelled against the petitioner to be proved. Thereafter, by order dated 26.6.97, the punishment of compulsory retirement was imposed on the petitioner. Aggrieved, the petitioner challenged the said order of punishment by instituting a writ proceeding before this Court which was registered and numbered as Civil Rule No. 6320/98. The aforesaid writ petition was decided by the Court by order dated 16.8.2002, by which the order of compulsory retirement imposed on the petitioner was set aside and the matter remanded back to the concerned authority for imposition of any other punishment except the punishment of dismissal, removal or compulsory retirement from service. Acting pursuant to the aforesaid order dated 26.8.2002 passed by the Court in Civil Rule No. 6320/98, the impugned order dated 8.10.2002 has been passed imposing fresh punishment on the petitioner with consequential directions, as already noted.

4. Before adverting to the issues arising in the writ petition, it will be necessary to notice certain findings recorded in the order dated 16.8.2002 passed by this Court in Civil Rule No. 6320/98 as the said findings would have a relevant bearing to the issues raised in the present writ petition. The said relevant findings recorded by the Court are, therefore, extracted hereinbelow :

4. In this case, the petitioner has not alleged any serious infirmity or illegality in the departmental proceeding which was held in accordance with the relevant rules and regulations and principle of natural justice was followed and there was no violation of the same.

5. The main contention of the petitioner is that the findings recorded by the enquiry officer were not in accordance with the materials on record and even if they were taken as correct, no case for removing the petitioner from service was made out.

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9. The above transactions took place in the year 1991 and during the last ten years, i.e. till today, the bank has not been asked by anyone to make good the above amount or any claim has been made by the account holder or anyone else in respect of the above amount.

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12. Thus taking an over all view of the matter, we find that this is not a case where the petitioner, a bank employee, is guilty or subversive of prejudicial act or is guilty of any misappropriation of bank fund.

13. There is also no finding that the petitioner lacked integrity or honesty or the bank in fact suffered any financial loss for the act of the petitioner.

14. In view of the above, the learned counsel for the petitioner has submitted that the punishment of compulsory retirement on the petitioner is shocking and disproportionate to the nature of allegations. .

5. Mr PK Roy Choudhury, learned counsel for the petitioner has sought to contend that the finding of guilt recorded by the Enquiry Officer is ex-facie not sustainable on the basis of the materials adduced in the course of the enquiry. The learned counsel has further contended that certain findings of the Enquiry Officer favourable to the petitioner have been disagreed with by the disciplinary authority without, however, giving any notice or opportunity to the petitioner and without following the mandatory procedure prescribed by law in this regard. Mr. Roy Choudhury has also contended that in any view of the matter, the punishment imposed is grossly disproportionate, particularly, as the petitioner has retired from service in the meantime. In any event, according to the learned counsel, the directions of the disciplinary authority with regard to the period of suspension as well as the period between 26.6.97 to 6.10.2002 has to be treated as contrary to the provisions contained in F.R. 54B and, therefore, at least the aforesaid part of the impugned order dated 8.10.2002 should receive this Court’s interference.

6. The challenge in the earlier writ petition filed by the petitioner against the order dated 26.6.97 imposing the punishment of compulsory retirement i.e. Civil Rule No. 6320/98 was founded, inter alia, on the tenability of the findings recorded by the Enquiry Officer in his report with regard to the culpability of the petitioner which contention has also been sought to be advanced at the hearing of the present writ petition. In view of the categorical findings recorded by this Court in the earlier proceeding i.e. Civil Rule No. 6320/98 on the basis of the contentions advanced in that writ petition, the point that has now been sought to be agitated with regard to the validity of the findings of the Enquiry Officer and the conclusion of the disciplinary authority will no longe

r be open for scrutiny by the Court. The fact that this Court had remanded the m atter to the disciplinary authority for imposition of any other punishment excep t the punishment of dismissal, removal or compulsory retirement itself would be suggestive of the fact that the charge levelled against the petitioner was held to be proved notwithstanding which, a lesser punishment was directed to be impos ed on the basis of the grounds recorded in the Court's order dated 16.8.2002 pas sed in Civil Rule No. 6320/98. The said grounds extracted above are broadly to t he effect that no pecuniary loss has been caused to the Bank by the actions of t he petitioner and that the petitioner is not guilty of any misappropriation or l ack of integrity or of dishonesty.

7. In view of the conclusions reached by this Court as recorded in the order dated 16.8.2002 passed in Civil Rule No. 6320/98, the only question th at will survive for adjudication is the correctness of the quantum of the punish ment imposed on the petitioner by the impugned order dated 8.10.2002 and also th e consequential directions contained in the said order with regard to the manner in which the period of suspension and the period between 26.6.97 to 6.10.2002 i s to be dealt with.

8. The punishment imposed on the petitioner is one of the major pen alties contemplated by Regulation 4(f) (as amended) of the United Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976. Under the aforesai d provisions of the Regulation, the penalty of reduction to a lower stage in the time scale of pay has to be for a specified period. Regular 4(f) (as amended) g ives a discretion to the disciplinary authority to issue or refrain from issuing further directions as to whether the officer will earn increments of pay durin g the period of such reduction and whether on the expiry of such period the redu ction will have the effect of postponing the future increments of his pay .

9. The power of this Court under Article 226 of the Constitution to reduce the punishment imposed by the employer is a rare power which has to be e xercised in exceptional situations. Not only the punishment imposed must be shoc kingly disproportionate to the gravity of the charge levelled and proved, any de cision of the Writ Court to interfere with the quantum of punishment has to be b ased on a consideration of the totality of the facts of the case. Only upon exis tence of adequate reasons, which has to be recorded in writing, it will be prope r to invoke the rare power available to the Court. This is the view expressed by the Apex Court in the case of Regional Manager, U.P.SRTC, Etawah & Ors. vs- Ho ti Lal and Anr. reported in (2003) 3 SCC 605.

10. Applying the above law to the facts of the present case what the Court finds is that in view of the earlier order of this Court dated 16.8.2002 passed in Civil Rule No. 6320/98, it must be held that the charge levelled again st the petitioner has been held to be proved. This is because by the aforesaid o rder this Court had directed award of a lesser punishment in lieu of the punishm ent of compulsory retirement imposed on the petitioner. If the charge levelled a gainst the petitioner has been held to be proved surely some punishment commensu rate with the gravity of the charge must be imposed on the petitioner. The essen ce of the charge levelled against the petitioner is that the petitioner in the c ourse of his official duties had acted in a manner contrary to the established n orms of the Bank. Regardless of the consequences of the said charge in exposing the Bank to loss and liability and the lack of any malafide intention on the par t of the petitioner, if on consideration of the charge levelled, the disciplinar y authority had imposed the punishment in question by the impugned order dated 8 .10.2002, on due application of the law laid down by the Apex Court, as noticed above, the present will not be a fit case for interference.

11. Performance of duties by a Bank Officer in violation of the Bank 's norms even it be without any malafide intention is a sufficiently serious cha rge which has the potential of causing adverse consequences which may not have o

ccurred in the present case. The Court is, therefore, of the view that the prese nt will not be a fit case for holding that the punishment imposed by the order d ated 8.10.2002 is so disproportionate that it must receive the Court’s interfere nce.

12. The Court has, however, noticed that under the provisions of Reg ulation 4(f) of the Regulations in Force of the Bank the penalty of reduction to a lower stage in the time scale of pay has to be for a specified period. In the impugned order dated 8.10.2002, the period during which the penalty of reductio n is to remain in force has not been specified. The aforesaid lacuna by itself w ill not invalidate the order, as has been contended, as the same is capable of b eing cured by directing the respondents to specify the period.

13. It has been contended on behalf of the petitioner that the order dated 8.10.2002 in so far as the period of suspension as well as the period bet ween 26.6.97 to 6.10.2002 is concerned, is contrary to the provisions contained in F.R. 54B. On due consideration of the provisions contained in F.R. 54 B, part icularly Clause 5 thereof, the contention is found to be well established. Under F.R. 54B (5) the decision of the employer to pay a part of the pay and allowanc es during the suspension period or to withhold the entire amount has to be prece ded by a notice and opportunity to the employee in question and final orders in this regard is required to be passed only after hearing the affected employee. T he principle behind the particular enactment being wholesome, the Court is of th e view hat there should be no hesitation in imposing such a requirement in the p resent case even though the petitioner may not be squarely covered by the provis ions of Fundamental Rules. In the present case, it is not in dispute that the im pugned order dated 8.10.2002 in so far as the period of suspension as well as th e period between 26.6.97 to 6.10.2002 is concerned, has been passed without any notice and/or opportunity to the petitioner. The aforesaid part of the order dat ed 8.10.2002, therefore, is interfered with with a direction to the respondent a uthorities to act in the matter after giving an opportunity to the petitioner an d after due consideration of his representation in this regard, if any.

14. Consequently and in the light of the foregoing discussion, this writ petition is partly allowed to extent indicated above.